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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,883	02/04/2002	Andrew J. DeCarlo	AJD101	4828

7590 10/14/2004
William E. Noonan
Post Office Box 07338
Fort Myers, FL 33919

EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/066,883	DECARLO, ANDREW J.	
	Examiner	Art Unit	
	Bryan Fischmann	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) 18,21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 14-17, 19, 20, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Acknowledgements

1. The amendment filed 08-13-2004 has been entered.

Election/Restriction

2. The restriction requirement (paper 3) dated 4-08-2003 required an election between two species, Species I, (Figures 1-7) and Species II (Figures 8-12). In the election dated 12-12-2003 (paper 7), the Applicant elected to prosecute Species II, and stated that claims 1-3 and 5-13 "read" on elected species II. Claim 4 was therefore withdrawn from consideration as being directed toward a non-elected species.

However, since claim 1 has been amended to contain allowable subject matter, claim 1 is no longer withdrawn and is allowed.

3. The Applicant did not state in paper 7 whether the election was made with or without traverse. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

4. Also, the amendment filed 08-13-2004 included new claims 14-24. The Applicant did not state which claims read on the elected species. Accordingly, this determination will be made by the Examiner.

After reviewing new claims 14-24, claims 18, 21 and 22 are withdrawn from consideration, as being drawn to a non-elected species.

5. An action on the merits of the elected invention, claims 1-3 and 5-7, 12-17, 19, 20, 23 and 24 follows.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14-16, 19, 20, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Flagg, US Patent 3,305,244.

Flagg teaches a cart for supporting a golf bag and clubs therein in a vertically upright condition upon an underlying surface, said cart comprising:

a carriage for accommodating the golf bag,

a pair of axially aligned, non-motorized forward wheels (24) which are axially rotatably connected to said carriage and at least one rearward wheel (42) that is swivelably (lines 19-21 of column 2) and rotatably mounted to said carriage, each said wheel being rotatably engagable with the underlying surface;

said carriage including a base (14) for engaging the bottom of the golf bag and a support frame (10) extending upwardly from the base and carrying at least one upper holder (Figure 1) above the base for engaging a bag placed on said base such that the bag is held in a vertically upright condition, and

a handle (52) attached to and extending rearwardly from an upper portion of said frame, which upper portion is located above a midpoint of the frame, whereby applying a generally horizontal manual pushing or pulling force to said handle causes said cart to

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move over the underlying surface on said wheels while the bag and clubs are maintained in the vertically upright condition.

Regarding claims 15 and 24, note the use of the term "substantially".

Regarding claim 16, see Figure 1.

Regarding claim 20, see reference number 10

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 14-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maltrap, US Patent D219,509, in view of Fricke et al, US Patent 3,023,021.

Maltrap teaches a cart for supporting a golf bag and clubs therein in a vertically upright condition (see comments below) upon an underlying surface, said cart comprising:

a carriage for accommodating the golf bag (Figure 1);

a pair of axially aligned non-motorized forward wheels (Figure 1 – see also comments below) which are axially rotatably connected to said carriage and at least one rearward wheel (see comments below) that is rotatably mounted to said carriage, each said wheel being rotatably engagable with the underlying surface (Figure 1);

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said carriage including a base (semi-circular recess where golf bag rests) for engaging the bottom of the golf bag and a support frame (including remainder of horizontal portion that support wheels and golf bag and lower and middle portion of vertical structure supporting the golf bag) extending upwardly from the base (Figure 1) and carrying at least one upper holder (upper portion of generally vertical structure supporting the golf bag) spaced apart above the base for engaging a bag placed on said base such that the bag is held in a vertically upright condition (Figure 1 – see also comments below), and

a handle attached to and extending rearwardly from an upper portion (upper surface of “vertical portion” supporting wheels) of said frame (Figure 1), which upper portion is located above a midpoint (point which is located at a middle of the fore-to-aft direction of the support frame and at a vertical center of the support frame) of said frame, whereby applying a generally horizontal pushing or pulling force to said handle causes said cart to move over the underlying surface on said wheels while the bag and clubs are maintained in the vertically upright condition (see comments below).

Maltrap fails to explicitly state that the rearward wheel is swivelably mounted, though the rearward wheel appears to be swivelably mounted in Figure 1.

However, it is a generally recognized principle that in a stable, three-wheel handle propelled vehicle such as a cart, that at least one wheel should be capable of being steered, or “swivel” in order to facilitate maneuvering. Fricke provides a teaching of a stable handle propelled vehicle with two axially aligned front wheels (47) and a rear

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wheel (49) that is "swivelably" mounted (lines 20 and 21 of column 2) to the vehicle. As noted, a swivelably mounted rear wheel facilitates maneuvering.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a swivelably mounted rear wheel in the cart of Maltrap, as taught by Fricke.

Regarding the term "vertically upright", note that page 7 of the disclosure defines "vertically upright" as: the longitudinal axis of the supported bag and clubs is substantially perpendicular, and in any event, inclined no more than 12 degrees from perpendicular, relative to the plane of the underlying surface. Note that this is consistent with the teachings of Maltrap, which shows the longitudinal axis of the supported bags and clubs are slightly, but less than 12 degrees off-vertical. Note also when the cart is utilized on an underlying surface with a slight downslope, which is commonly found on a golf course, that the golf bag and clubs will be even less off-vertical and depending upon the grade of the downslope, may achieve a "vertical orientation".

Regarding which wheels of Maltrap are the "forward" wheels, and which is the "rearward" wheel, note that the drawing description for Figure 2 of Maltrap is described as a "front view". Note that the "single wheel" is partially hidden from view in Figure 2, while the two axially aligned wheels are not. From this, it is obvious that the single wheel must be the "rearward wheel" since it is partially obscured from view in the "front view" of Figure 2, while the "axially aligned wheels" are not, so they must be the front wheels.

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Regarding claim 17, see the drawing figures of Maltrap.

Regarding claim 20, see the vertical structure supporting the golf bag of Maltrap.

Allowable Subject Matter

10. Claims 1-7, 12 and 13 are allowed.

Response to Applicant's Remarks and Examiner's Comments

11. The amendment dated 08-13-2004 resolved all specification, drawing and claim objections made on the last Office Action dated 04-07-2004.

12. The amendment resolved the 35 USC 112 2nd paragraph rejections made on the last Office Action.

13. The amendment to claim 1 has overcome the 35 USC 103 rejection of claim 1 and claims that depend upon claim 1 made in the last Office Action. However, note that all new claims added that are not withdrawn are rejected under 35 USC 102 and 103 for reasons set forth in this Office Action.

14. Applicant's arguments with respect to the 103 rejections made on the first Office Action in the "Remarks" section of the amendment have been considered, but are considered, for the most part, moot in view of the new claims added by amendment and the amendment to claim 1. However, since the same prior art utilized in the last Office Action, is being utilized in the 103 rejections of the new claims, pertinent comments in the "Remarks" section of the amendment by Applicant regarding this prior art will be addressed as follows:

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(1) Applicant's remark - On pages 13 and 14, the Applicant recites "...The Maltarp reference discloses a golf cart that utilizes a pair of motorized wheels...Maltarp lacks applicant's non-motorized front wheels..."

Examiner's response - The Examiner offers the following comment

The statement by Applicant that "Maltarp...discloses...a pair of motorized wheels" is not substantiated by the reference. There is no teaching in the Maltarp reference that the front wheels are driven by a motor. This is merely an opinion of Applicant that is not supported by fact.

(2) Applicant's remark - On pages 14 and 15, the Applicant recites "...Fricke does not disclose anything whatsoever about supporting golf bags... Instead, Fricke depicts a garden or snow removal tool... Certainly, without the benefit of applicant's disclosure, there would be no reason whatsoever for combining the Maltarp and Fricke references..."

Examiner's response - The Examiner offers the following comment

The Fricke reference was utilized by the Examiner in 103 rejections set forth in this and the last Office Action as a secondary teaching with Maltarp as the primary reference. Maltarp provided the teaching of a three-wheeled cart that is utilized to hold and transport a golf bag. Fricke was utilized as a secondary teaching that a three-wheeled cart requires a rear single wheel of a three wheeled cart to be pivotally mounted about a generally vertical axis in order for the cart to be steered. This teaching is considered applicable to any three-wheeled cart, whether or not a golf club bag is being transported by the cart.

Conclusion

15. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jacobs, Nemeth and Liao – teach golf carts

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10-5-7
BRYAN FISCHMANN
PRIMARY EXAMINER